

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Powhatan School)
Boyce, Virginia)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-198581

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER**Adopted: June 1, 2001****Released: June 4, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by Powhatan School (Powhatan), Boyce, Virginia, seeking a waiver of the Commission's rules governing the filing window deadlines for applications for discounts under the schools and libraries universal service support mechanism.¹ For the reasons set forth below, we deny Powhatan's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.² In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.³ The Administrator must post the FCC

¹ Letter from Sister Elizabeth, Powhatan School, Boyce, Virginia, to Federal Communications Commission, filed July 25, 2000 (Waiver Request).

² 47 C.F.R. §§ 54.502, 54.503.

³ 47 C.F.R. §§ 54.504(b)(1), (b)(3).

Form 470 on its website and the applicant is required to wait 28 days before making a commitment with a selected service provider.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵

3. The Commission's rules allow the Administrator to implement an initial filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁶ Section 54.507(c) of the Commission's rules states that fund discounts will be available on a first-come-first-served basis.⁷ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.⁸ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

4. The application window for Funding Year 3 closed on January 19, 2000.⁹ Powhatan filed a request for a waiver of the filing window for Funding Year 3 with SLD on January 14, 2000.¹⁰ Powhatan filed its FCC Form 471 on February 10, 2000, after the filing window had closed.¹¹ By letter dated July 25, 2000, SLD informed Powhatan that SLD was not permitted to consider its request and directed Powhatan to request a waiver from the Commission.¹² In response, Powhatan filed the instant Waiver Request with the Commission.¹³ In its Waiver Request Powhatan, states that on December 17, 1999, it received an e-mail stating that the FCC Form 470 was due that day.¹⁴ A school representative then called SLD to determine whether the e-mail was accurate.¹⁵ Powhatan indicates in its Waiver Request that SLD's representative informed Powhatan that there was no deadline for filing the FCC Form 470, but that the FCC

⁴ 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. §§ 54.504(c).

⁷ 47 C.F.R. § 54.507(c).

⁸ 47 C.F.R. §§ 54.507(g).

⁹ See SLD's website, <<http://www.sl.universalservice.org>>.

¹⁰ Letter from Sister Elizabeth, Powhatan School, to Federal Communications Commission, filed July 25, 2000.

¹¹ FCC Form 471, Powhatan School, filed February 10, 2000.

¹² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sister Elizabeth, Powhatan School, dated July 25, 2000 (Administrator's Decision on Appeal); *see also* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sister Elizabeth, Powhatan School, dated January 21, 2000 (Acknowledgement of Waiver Request).

¹³ Waiver Request.

¹⁴ *Id.*

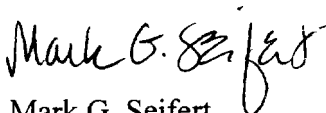
¹⁵ *Id.*

Form 471 was due January 19.¹⁶ According to Powhatan, it assumed that the rules concerning the deadline had changed.¹⁷ Powhatan's Waiver Request also asserts that at no time during the conversation with SLD, was it reminded that there was a 28-day window in effect between the filing of the FCC Form 470 and the 471.¹⁸

5. We have reviewed the record before us and conclude that Powhatan has not demonstrated a reasonable basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁹ When requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant ultimately bears the responsibility of completing the relevant forms and submitting them to SLD within the established deadlines if the applicant wishes to be considered with other in-window applicants. The instructions to the FCC Form 470 and 471, as well as SLD's website outline the filing requirements including the 28-day competitive bidding requirements.²⁰ In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.²¹ We find no basis for waiver of the filing window deadline, we therefore, deny Powhatan's Waiver Request.

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Waiver Request filed by Powhatan School, Boyce, Virginia, on July 25, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁰ Instructions for Completing the Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB Approval No. 3060-0806 (FCC Form 470 Instructions) (September 1999); Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB Approval No. 3060-0806 (FCC Form 471 Instructions) (September 1999); *see also* SLD website, <<http://www.sl.universalservice.org>>.

²¹ *Request for Review by Anderson School Stratsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association*, File No. SLD-13364, CC Dockets No. 95-45 and 97-21, Order, DA 00-2630 (Com. Car. Bur. Rel. Nov. 24, 2000), at para. 8.

